

**Poe Hydroelectric Project  
Responses to Comments on the Draft Initial Study Document and Mitigated Negative Declaration**

On September 8, 2017, the State Water Resources Control Board (State Water Board) circulated a draft Initial Study and Mitigated Negative Declaration (IS/MND) for the Poe Hydroelectric Project (Project). The Project is also known as Federal Energy Regulatory Commission (FERC) Project No. 2107. The public comment period closed on October 11, 2017. During the comment period, the State Water Board received comment letters on the draft IS/MND from: Butte County, dated October 11, 2017; the California Department of Fish and Wildlife (CDFW), dated October 11, 2017; Pacific Gas & Electric Company (PG&E), dated October 10, 2017; the United States Forest Service (USFS), dated October 10, 2017; and the United States Fish and Wildlife Service (USFWS), dated October 10, 2017. In accordance with the California Environmental Quality Act (CEQA) Guidelines, the comments were considered. This document is a summary of the written comments received on the draft IS/MND, State Water Board’s replies to those comments and, where applicable, the page(s) and paragraphs of the IS/MND where text was revised to address each comment.

<b>Comment Number, Commenter, Affiliation (Comment Date)</b>	<b>Comment (Location of Comment in Comment Letter)</b>	<b>Reply</b>	<b>Location of Text Revision</b>
<p>1)  Bruce Alpert, Butte County; Richard Roos-Collins and Julie Gantenbein, Water and Power Law Group PC, Counsel for Butte County (October 11, 2017)</p>	<p>However, the IS/MND does not address whether the alternatives would comply with the State Water Board’s substantive duty under CEQA “... to avoid or minimize environmental damage where feasible.” 14 C.C.R. § 15021(a); see also id., §§ 15126(a)(1), 15370. The Clean Water Act, and implementing actions thereunder, have a substantive goal to “...restore and maintain the chemical, physical, and biological integrity” of the nation’s waters. 33 U.S.C. § 1251. And under the Porter-Cologne Act, a request for water quality certification must describe, and the State Water Board must consider, “... steps that have been or will be taken to avoid, minimize, or compensate for any anticipated adverse effects ...” on beneficial uses. 23 C.C.R. § 3856(h)(6) (page 1, paragraph 3).</p>	<p>The Governor’s Office of Planning and Research develops California Environmental Quality Act (CEQA) guideline for which lead agencies must follow when producing an environmental review document. Specifically, the CEQA guidelines state that a lead agency when analyzing a project must describe the “physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective” Cal. Code Regs., tit. 14, § 15125. For the purpose of CEQA, those physical conditions existing at the time PG&amp;E submitted the water quality certification application on February 18, 2005 are the baseline conditions. Mitigation Measures adopted to avoid, minimize or compensate for impacts of the Project are described on pages 40, 56, 62, and 78 of the Final Mitigated Negative Declaration. Furthermore, the Mitigation Monitoring and Reporting Plan outlines reporting and performance standards for Project impact mitigation.</p>	<p>None required</p>

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<p>2)</p> <p>Bruce Alpert, Butte County; Richard Roos-Collins and Julie Gantenbein, Water and Power Law Group PC, Counsel for Butte County (October 11, 2017)</p>	<p>Contact and non-contact recreation are designated beneficial uses of the North Fork Feather including the Project reaches. By continuing to divert water for power generation, the Applicant Proposal would reduce by 95% the number of boatable days during summer months. Butte County, NREA [Notice of Readiness for Environmental Analysis] Comments, pg. 19-20 and Attachment 4; IS/MND, pg. 12. The IS/MND does not find that any of the alternatives would avoid, minimize, or compensate for that impact (page 2, paragraph 1).</p>	<p>See response to comment number one and three for a discussion of CEQA baseline and alternatives analysis.</p>	<p>None required.</p>
<p>3)</p> <p>Bruce Alpert, Butte County; Richard Roos-Collins and Julie Gantenbein, Water and Power Law Group PC, Counsel for Butte County (October 11, 2017)</p>	<p>The IS/MND does not expressly address the alternative proposed by Butte County in our comments. See Butte County, “Recommended Conditions for a New License” (eLibrary 200504115081 (April 11, 2005) (“NREA Comments”); “Amended Comments on Draft Environmental Assessment” (eLibrary 200609195052) (September 19, 2006) (“DEA Comments”); and Water and Power Law Group PC, memoranda to State Water Board, “Proposed Conditions for the Poe Project” (August 2, 2013) and “Proposed Non-Flow Recreation Measures for the Poe Project” (October 18, 2013). The County’s alternative includes a flow schedule sufficient for boating at least one weekend per month in July, August,</p>	<p>Under CEQA the State Water Board is not required to propose or analyze alternatives as a part of an Initial Study. According to CEQA Guidelines section 15063, subdivision (a)(2), the purpose of an Initial Study is to “Provide the Lead Agency with information to use as the basis for deciding whether to prepare an EIR or a Negative Declaration.” An initial study would then be used to help determine an appropriate range of alternatives to avoid, minimize, or compensate for potentially significant impacts using the “Rule of Reason.”</p> <p>However, Butte County’s comments made throughout the relicensing process are part of the Project record and were considered when producing the draft and final Water Quality Certification.</p>	<p>None required.</p>

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	September, and October, and associated improvements in recreational facilities, in order to establish a robust ecotourism use of the North Fork Feather (page 2, paragraph 2).		
4)  Bruce Alpert, Butte County; Richard Roos-Collins and Julie Gantenbein, Water and Power Law Group PC, Counsel for Butte County (October 11, 2017)	The IS/MND offers an implicit rationale for not considering measures to minimize the Project impacts on recreation. It states: "in a CEQA analysis of an existing hydroelectric project, reauthorizing the project is not likely to yield many environmental impacts because most of the impacts have already occurred, and, when compared to the current condition, do not register as significant. Environmental impacts that may or could occur are usually the result of new conditions necessary to bring the Proposed Project into compliance with existing laws including the CWA and ESA." IS/MND, p. 35. This rationale is inconsistent with applicable laws, if it means that any enhancement in baseline conditions would suffice in this relicensing proceeding. We discuss CEQA and the Porter-Cologne Act, above. Similarly, under the Federal Power Act, a relicensing proceeding results in a new decision whether a project will continue its power operations. <i>Confederated Tribes and Bands of the Yakima Indian Nation v. FERC</i> , 746 F.2d 466, 476 (9th Cir. 1984). A	<i>Confederated Tribes and Bands of the Yakima Indian Nation v. FERC</i> , 746 F.2d 466 (9th Cir. 1984) centered on issuance of a FERC license without prior consideration of Colombia River Fisheries analyses and possible protection, mitigation and enhancement measures being considered in a parallel non-FERC proceeding being deferred to post-licensing. The IS/MND does not fail to consider any potential impacts of the Project or defer consideration of any potential impacts of the Project to a later date after issuance of a water quality certification and Butte County has not presented evidence of why this case is applicable for purposes of the proper CEQA analysis. See response to comment number three above regarding CEQA baseline.	None required.

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	continuing impact which first arose under the original license is not a given – indeed, is subject to the requirement to avoid, minimize, or compensate - in this relicensing proceeding (page 2, paragraph 3).		
5)  Bruce Alpert, Butte County; Richard Roos-Collins and Julie Gantenbein, Water and Power Law Group PC, Counsel for Butte County (October 11, 2017)	The North Fork Feather is listed as impaired for water temperature under Clean Water Act section 303(d), due to PG&E’s hydropower system. The IS/MND correctly concludes that the flow schedule in DWQC[draft water quality certification] Condition 1 would lower water temperatures relative to the original license. See, e.g., pg. 9, 26, and 44. However, it does not estimate resulting water temperatures (expressed as averages, ranges, or frequencies); does not demonstrate that the Project would comply with applicable water quality objectives, including the designation as coldwater habitat or the requirement that an activity (such as the new license) must not increase receiving water temperature by more than 5 degrees Fahrenheit; and does not demonstrate that the State Water Board Staff Measures would avoid, minimize, or compensate for the Project’s continuing impacts on water temperatures. The IS/MND does not address the cumulative impacts of PG&E’s hydropower system on water temperatures in Project reaches. For prior analysis of this	Basin Plan objectives are not analogous to baseline conditions for purposes of a propose CEQA analysis and are also not thresholds of significance in the CEQA context. See response to comments number six.	None required.

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	impact, see Butte County, draft Environmental Assessment (EA) Comments, Exhibit 1; California Sportfishing Protection Alliance, "Comments on the Draft Environmental Impact Report for the North Fork Feather Project" (March 26, 2015) (page 3, paragraph 1).		
6)  Bruce Alpert, Butte County; Richard Roos-Collins and Julie Gantenbein, Water and Power Law Group PC, Counsel for Butte County (October 11, 2017)	In finding that the Project as modified by State Water Board Staff Measures would not have significant impacts on recreation and water temperature, the IS/MND appears to rely on the rationale that continuing impacts would decrease by comparison to baseline. That rationale could improperly permit the State Water Board to certify a new license which would violate water quality objectives, as long as the violations are less than baseline. In addition to the requirements of the CEQA and the Porter-Cologne Act, the Clean Water Act section 401(a) provides that a certification must provide a reasonable assurance of compliance with water quality objectives. 33 U.S.C. § 1341(a) (page 3, paragraph 2).	For discussion on CEQA baseline see response to comment number one  Further, the flow schedule outlined in the final Water Quality Certification and analyzed in the Initial Study is identical to the schedule proposed by Butte County and American Whitewater in letter dated August 2, 2013 (Water and Power Law Group PC, 2013)).	None required
7)  Bruce Alpert, Butte County; Richard Roos-Collins and Julie Gantenbein, Water and Power Law Group PC, Counsel for Butte County	As discussed in our July 14, 2017 comments, the IS/MND does not specifically analyze the County's proposal of a flow schedule, certain facility improvements (such as a new trail from Bardees Bar Road to Poe Beach), funding for law enforcement related to recreation, the North Fork	FERC's final EA analyzes and rejects many of the County's proposed recreation measures including trails, funding for law enforcement related to recreation, and the North Fork Feather Enhancement Fund, among others. As noted in the IS/MND, "In [the] IS, the whole of the action is the continued operation of the Existing Project under a new FERC license consistent with a	None required.

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(October 11, 2017)	Feather Enhancement Fund (for off-site mitigation), and other measures to avoid, minimize, and compensate for the Project's continuing impacts on recreation. See NREA Comments, pp. 4 - 22. To emphasize one example, the IS/MND does not analyze a maintenance measure to correct the erosion and other degradation resulting from PG&E's use of Bardees Bar Road. See Butte County, DEA Comments, Exhibit 17. Attachment 1 shows the marginally passable conditions of the road. That said, we are very grateful for the several facility improvements proposed in DWQC [draft water quality certification] Condition 8 (page 3, paragraph 3).	number of PM&E measures (as described in FERC's final EA) and State Water Board measures necessary to protect water quality standards." (IS/MND at p. 17.)  The State Water Board generally includes protection, mitigation and enhancement measures required by mandatory conditioning agencies. Condition 12 of the Final Water Quality Certification requires that PG&E develop a road management plan to prevent erosion and protect waters of the state that could be impacted from use Project roads.	
8)  Bruce Alpert, Butte County; Richard Roos-Collins and Julie Gantenbein, Water and Power Law Group PC, Counsel for Butte County (October 11, 2017)	DWQC [draft water quality certification] Condition 6 provides for an advisory group to meet to develop a permanent recreation flow schedule. We will participate in such a group (page 3, paragraph 4).	Comment noted.	None required.
9)  Bruce Alpert, Butte County; Richard Roos-Collins and Julie Gantenbein, Water and Power Law Group PC, Counsel for Butte County	However, the IS/MND does not explain why 6,000 acre-feet per year would be sufficient for protection of this beneficial use, or why the State Water Board has not resolved the terms of this flow schedule while this proceeding has been pending. The potential conflict between power,	CEQA requires that a Project be compared with the environmental baseline (see response to comment 1).  The purpose of the Recreational Technical Review Group (RTRG) is to develop and schedule, in consultation with relicensing participants, recreational flow opportunities in the Project reach during Wet and	None required.

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(October 11, 2017)	recreation, and foothill yellow-legged frogs has been discussed at length during that period; and the implementation of the new license for the Rock Creek-Cresta Project has provided helpful guidance how to square these uses. CEQA prohibits deferral of mitigation measures until a future time. 14 C.C.R. § 15126.4(a)(1)(B) (page 3, paragraph 4 and page 4, paragraph 1).	Normal water years. Condition 6 of the final water quality certification stipulates that during wet and normal water years the Licensee shall provide 6,000 acre-feet of water for recreational boating opportunities in addition to minimum instream flows outlined in Condition 1. The purpose of this approach is to protect and adaptively manage competing beneficial uses through biological monitoring, species-protective ramping rates and stakeholder input to schedule recreational boating flows.  The adaptive management included in the water quality certification, including use of an advisory group is not analogous to deferred mitigation; the adaptive management will ensure that any impacts are less than significant.	
10)  Bruce Alpert, Butte County; Richard Roos-Collins and Julie Gantenbein, Water and Power Law Group PC, Counsel for Butte County (October 11, 2017)	Butte County supports the State Water Board's convening a workshop to address disputed factual and legal issues. We are confident that the issues raised above are resolvable in an expeditious manner, in light of the extensive record in this proceeding, the available models, and the helpful stakeholder discussions over the past 15 years (page 4, paragraph 2).	Comment noted.	None required.
11)  Bruce Alpert, Butte County; Richard Roos-Collins and Julie Gantenbein, Water and Power Law Group PC, Counsel for Butte County (October 11, 2017)	Butte County supports relicensing this Project. That said, we request that the water quality certification avoid, minimize, or compensate for the Project's continuing impacts on recreation and coldwater fisheries, along with other beneficial uses. We seek to establish robust ecotourism use of the Project reaches. Beginning in 2005, we have submitted extensive expert evidence	Comment noted.	None required.

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	that that result is consistent with economical and reliable power generation. See, e.g., NREA Comments, Attachment 6 (page 4, paragraph 3).		
12)  Patrick Moeszinger, CDFW (October 11, 2017)	CDFW is also submitting comments as a Responsible Agency under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & Game Code (FGC), § 1600 et seq.). Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code(FGC) will be required. CDFW also administers the Native Plant Protection Act, Natural Community Conservation Act, and other provisions of the FGC that afford protection to California's fish and wildlife resources (page 1, paragraph 4).	PG&E notes in its November 2, 2017 letter regarding response to comments on the Mitigated Negative Declaration for the Poe Hydroelectric Project that it "will obtain an ITP [Incidental Take Permit] under CESA and comply with the provisions of Section 1602 when warranted by Project activities, to the extent consistent with federal law."	None required.
13)  Patrick Moeszinger, CDFW (October 11,	The Environmental Setting section of the MND (Section 3.1.2.2 Wildlife Resources, pg. 8) discusses special-status wildlife potentially	Added listing status designations to all listed wildlife species.	IS/MND Section 3.1.2.2, page 8.

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2017)	occurring on the Project site, but does not indicate that western pond turtle ( <i>Emys marmorata</i> ; WPT) and foothill yellow-legged frog ( <i>Rana boylei</i> ; FYLF) are both designated by CDFW as California Species of Special Concern. Additionally, both the American peregrine falcon ( <i>Falco peregrinus anatum</i> ) and the bald eagle ( <i>Haliaeetus leucocephalus</i> ) are designated a California fully protected species and listed as endangered under CESA (page 2, paragraph 4).		
14)  Patrick Moeszinger, CDFW (October 11, 2017)	Subsequent to the release of the proposed MND, the CESA status of the FYLF changed. On June 27, 2017, the California Fish and Game Commission (Commission) published a Notice of Findings regarding FYLF and accepted for consideration a petition from the Center for Biological Diversity to list this species as threatened under the CESA. Simultaneously, the Commission also provided notice that the FYLF is now a candidate species as defined by Section 2068 of the FGC. Within one year of the date of publication of the Notice of Findings, the CDFW will submit a written report, pursuant to Section 2074.6 of the FGC, indicating whether the petitioned action is warranted. During this period, candidates for listing under CESA are afforded the same	Added updated listing status designation for FYLF. PG&E notes in its November 2, 2017 letter, regarding response to comments on the Mitigated Negative Declaration for the Poe Hydroelectric Project that it “will obtain an ITP under CESA and comply with the provisions of Section 1602 when warranted by Project activities, to the extent consistent with federal law.”	IS/MND Section 3.1.2.2, page 8.

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	protections as listed species; therefore the FYLF is currently treated as a threatened species under the CESA (page 2, paragraph 5 and page 3, paragraph 1).		
15)  Patrick Moeszinger, CDFW (October 11, 2017)	The CDFW is concerned that the Initial Study prepared for the Project states that the Lead Agency has determined that the proposed Project will have a less than significant impact on any special status species identified by the CDFW. The Biological Resources section of the MND identifies several Project activities that have the potential to result in negative impacts to FYLF egg masses, tadpoles, and metamorphs, including potential “take” of FYLF as defined by State law. Additionally, the Environmental Protection Measures section of the MND (pages 86-92) identifies several proposed measures intended to minimize Project impacts to FYLF, though these measures are not explicitly described in the MND (page 3, paragraph 3).	For a description and analysis of the proposed Environmental Protection Measures summarized in tabular form (pages 86-92), see pages 17-31 (Proposed Project, including PG&E’s proposed environmental measures as modified by the FERC staff alternative plus the mandatory USFS 4(e) conditions and WQC conditions) and pages 44-47 (FYLF section of 5.4.5, Evaluation of Environmental Impacts, Biological Resources).	None required.
16)  Patrick Moeszinger, CDFW (October 11, 2017)	In reviewing the Initial Study and MND, CDFW has had a difficult time determining what measures are required as a condition of approval for the Project. If mitigation measures are required as part of the Project, the Lead Agency is required to prepare a mitigation monitoring or a reporting program to ensure the implementation of those measures	A mitigation monitoring and reporting plan (MMRP) has been prepared and is included with the final IS/MND.	None required.

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	(CEQA Guidelines, § 15097). CDFW recommends that the mitigation monitoring or reporting program be included in the MND rather than incorporating measures by reference so that CDFW, any other trustee or responsible agency, and the members of the public can review the proposed measures and provide input to the Lead Agency (page 3, paragraph 4).		
17)  Patrick Moeszinger, CDFW (October 11, 2017)	Mitigation measures should establish performance standards to evaluate the success of the proposed mitigation, provide a range of options to achieve the performance standards, and must commit the Lead Agency to successful completion of the mitigation. Mitigation measures should also describe when the mitigation measure will be implemented, and explain why the measure is feasible. The MND should identify the following items: how each measure will be carried out; who will perform the measures; when the measures will be performed; the performance standards and mechanisms for achieving success; and an assured source of funding to acquire and manage identified mitigation lands, when applicable (page 3, paragraph 5).	Comment noted. The MMRP included with the final IS/MND will satisfy CEQA requirements.	None required.
18)  Patrick Moeszinger,	A CESA ITP (FGC §2081(b)) should be obtained if the Project has the potential to result in incidental take of	PG&E notes in its November 2, 2017 letter, regarding response to comments on the Mitigated Negative Declaration for the Project that it “will obtain an ITP	None required.

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CDFW (October 11, 2017)	species of plants or animals listed under CESA, either during any construction, or over the life of the Project. Issuance of a CESA permit is subject to the CEQA documentation; therefore, the CDFW requests that the CEQA document for this Project evaluate activities that may result in direct or indirect incidental take, identify measures to avoid and minimize take, identify measures to fully mitigate the take, and include a mitigation monitoring and reporting program. A CESA ITP may only be obtained if the impacts of the authorized take of the species is minimized and fully mitigated and adequate funding has been ensured to implement the mitigation measures. The CDFW may only issue a CESA ITP if the CDFW determines that issuance of the ITP does not jeopardize the continued existence of the species. The CDFW will make this determination based on the best scientific information available, and shall include consideration of the species' capability to survive and reproduce, including the species known population trends and known threats to the species (page 3, paragraph 6).	<p>under CESA and comply with the provisions of Section 1602 when warranted by Project activities, to the extent consistent with federal law."</p> <p>Condition 31 of the final water quality certification states that "take" as a result of the Project and any act authorized under this water quality certification or water rights held by the Licensee, requires authorization for the take prior to any construction or operation of the portion of the Project that may result in a take.</p>	
19)  Patrick Moeszinger, CDFW (October 11, 2017)	As stated previously, the proposed Project is located within known range of both the bald eagle and peregrine falcon. Please note that fully protected species listed in the FGC	<p>Added updated listing status designations.</p> <p>See also response to comment number 18.</p>	IS/MND Section 3.1.2.2, page 8.

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	sections 3511, 4700, 5050, and 5515 may not be taken at any time. If any fully protective species is present or reasonably expected to occur within or immediately adjacent to the Project limits during the life of the Project, the MND should provide measures to ensure that no take to the mentioned species will occur as a result of the implementation of the Project (page 4, paragraph 1).		
20)  Patrick Moeszinger, CDFW (October 11, 2017)	The MND should identify all perennial, intermittent, and ephemeral rivers, streams, lakes, other features, and any associated biological resources/habitats present within the entire Project footprint (including access and staging areas) (page 4, paragraph 2).	For a description of the existing riparian areas and associated vegetation types, see pages 4-5 (Environmental Setting), pages 5-6 (Aquatic Resources), page 7 (Vegetation), page 9 (Hydrology) and Figure 1 of the IS/MND, as well as PG&E 2003.	None required.
21)  Patrick Moeszinger, CDFW (October 11, 2017)	The environmental document should analyze all potential temporary, permanent, direct, indirect and/or cumulative impacts to the above-mentioned features and associated biological resource/habitat that may occur as a result of the Project. If it is determined that the Project will result in significant impacts to these resources, the MND should proposed appropriate avoidance, minimization and/or mitigation measures (page 4, paragraph 3).	For a description of the existing biological resources see Section 3.1.2 (pages 5-8) and evaluation of environmental impacts in Section 5.4.5 (pages 42-51).	None required.
22)  Patrick Moeszinger,	Notification to the CDFW is required, pursuant to FGC section 1602 if the Project proposes activities that will	Comment noted.	None required.

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CDFW (October 11, 2017)	<p>substantially divert or obstruct the natural flow of water; substantially change or use any material from the bed, channel or bank of any river, stream, or lake; or deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake.</p> <p>CDFW approval of projects subject to Notification under FGC section 1602, is facilitated when the MND discloses the impacts to and proposes measures to avoid, minimize, and mitigate impacts to perennial, intermittent, and ephemeral rivers, streams, and lakes, other features, and any associated biological resources/habitats present within the Project study area. (page 4, paragraphs 4 and 5).</p>		
23) Patrick Moeszinger, CDFW (October 11, 2017)	Please note that when acting as a responsible agency, CEQA guidelines section 15096, subdivision (f) requires CDFW to consider the CEQA environmental document prepared by the Lead Agency prior reaching a decision on the Project. Addressing CDFW comments and disclosing potential Project impacts on CESA-listed species and any river, lake, or stream, and provide adequate avoidance, minimization, mitigation, monitoring and reporting measures; will assist CDFW with the	Comment noted.	None required.

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	<p>consideration of the MND and reduce potential delays when issuing an ITP and/or Lake or Streambed Alteration Agreement.</p> <p>Thank you for the opportunity to comment on the proposed MND. CDFW North Central Region staff are available to discuss our comments with SWRCB Project staff. If you have any questions regarding these comments please contact Patrick Moeszinger, Senior Environmental Scientist (Specialist) at (916) 358-2850, or Laurie Hatton, Senior Environmental Scientist (Specialist) at (916) 358-2847 (page 4, paragraphs 6 and 7).</p>		
<p>24)</p> <p>John A. Whittaker, IV, Winston &amp; Strawn, Attorney for PG&amp;E (October 10, 2017)</p>	<p>PG&amp;E compliments the SWB and its staff on the quality and thoroughness of the MND. PG&amp;E believes that the conclusions it reaches on the extent of the Project's potential impacts under the new license are well documented and generally correct (page 1, paragraph 2).</p>	<p>Comment noted.</p>	<p>None required.</p>
<p>25)</p> <p>John A. Whittaker, IV, Winston &amp; Strawn, Attorney for PG&amp;E (October 10, 2017)</p>	<p>PG&amp;E requests that the description of the "Proposed Project" be revised to more fully reflect the fact the Project is an existing FERC-licensed project and that PG&amp;E's proposal before the SWB State Water Board is for a WQC to continue to operate the Project under a new FERC license, subject to certain new conditions. PG&amp;E suggests that the description of "Proposed Project" be</p>	<p>Description of Proposed Project revised accordingly.</p>	<p>IS/MND page vi.</p>

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	<p>revised to read as follows:            “The Proposed Project primarily consists of <u>continued operation of Poe Dam, Poe Reservoir, Poe Powerhouse, Big Bend Dam and Reservoir, and recreation facilities under a new FERC license, as modified by the new license requirements, including United States Forest Service and SWB [State Water Board] WQC [water quality certification] conditions. The existing Big Bend Dam and Reservoir and existing recreation facilities at Poe Powerhouse, Poe Beach, Bardees Bar and Sandy Beach are not included in the existing FERC license but are proposed to be included in the new license by PG&amp;E, FERC, and other relicensing participants. By including Big Bend Dam and recreational facilities in the Proposed Project, the footprint will increase from its existing 313 acres to 340 acres. Under the Proposed Project, PG&amp;E would continue to operate the facility to provide baseload and peaking power production.”</u></p> <p>The above revision to "Proposed Project" will make the description more consistent with other references to the Proposed Project in the MND (e.g., at pp. iii, 17, and 31). (page 1, paragraph 3 and page 2, paragraphs 1 and 2).</p>		

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26)  John A. Whittaker, IV, Winston & Strawn, Attorney for PG&E (October 10, 2017)	PG&E suggests that the sentence referencing Hardhead be revised to read as follows: "Hardhead, a California species of special concern <u>and a Forest Service Sensitive Species</u> , is known to occur in the Existing Project area." (page 2, paragraph 3).	Sentence revised accordingly.	IS/MND page 5, 1st paragraph under § 3.1.2.1.
27)  John A. Whittaker, IV, Winston & Strawn, Attorney for PG&E (October 10, 2017)	The sentence discussing Sacramento perch should be revised to reflect the fact that this species has been located upstream in Lake Almanor but has never been documented within the Project area. PG&E suggests that the sentence be revised to read as follows: "Sacramento perch ( <i>Archoplites interruptus</i> ), another California species of special concern, is known to occur upstream in Lake Almanor <u>but has never been documented within the Poe project area and has the potential to occur in Existing Project waters if individual fish move downstream.</u> " (page 2, paragraph 4).	Sentence revised accordingly.	IS/MND page 5, 1st paragraph under Section 3.1.2.1.
28)  John A. Whittaker, IV, Winston & Strawn, Attorney for PG&E (October 10, 2017)	Table 1 ("Fish species known or likely to occur in waters of the Existing Project") lists Spotted bass, Brown bullhead, and Sacramento perch even though the Table's footnote indicates that these species were not captured in surveys conducted by PG&E in the Poe project area. According to the footnote, these species were included because they are known to occur in upstream areas "and thus	Table revised (moved Sacramento perch to native species list).	IS/MND pages 6-7, Table 1.

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	<p>may occur in waters associated with the Proposed Project."</p> <p>As noted above, Sacramento perch has never been documented within the Poe project area; the same is true for Spotted bass and Brown bullhead. For this reason, PG&amp;E recommends that these three species be deleted from Table 1. If the SWB elects to retain these three species in Table I, it should move Sacramento perch to under the "Native Species" heading, since it is native to the NFFR, not introduced (page 2, paragraphs 5 and 6).</p>		
<p>29)</p> <p>John A. Whittaker, IV, Winston &amp; Strawn, Attorney for PG&amp;E (October 10, 2017)</p>	<p>The sentence discussing foothill yellow-legged frogs should be revised to recognize its various listings. PG&amp;E suggests that the sentence be revised to read as follows:</p> <p>Foothill yellow-legged frogs (<i>Rana boylei</i>) (FYLF), <u>a California species of special concern, a current candidate for listing as threatened under the California ESA, and a Forest Service Sensitive Species</u>, were documented in several locations in the Existing Project area during 1999-2006 surveys (page 3, paragraphs 1 and 2).</p>	<p>Added updated listing status designation for FYLF.</p>	<p>IS/MND Section 3.1.2.2, page 8.</p>
<p>30)</p> <p>John A. Whittaker, IV, Winston &amp; Strawn,</p>	<p>The reference to American peregrine falcon in the first sentence should be expanded to indicate that, while one adult American peregrine falcon was</p>	<p>Sentence revised accordingly.</p>	<p>IS/MND Section 3.1.2.2, page 8.</p>

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Attorney for PG&E (October 10, 2017)	found during the surveys, no evidence of peregrine falcon breeding was observed. PG&E suggests that the following be added at the end of the first sentence: "although no evidence of American peregrine falcon breeding was observed in the Poe project area." (page 3, paragraph 3).		
31)  John A. Whittaker, IV, Winston & Strawn, Attorney for PG&E (October 10, 2017)	The second sentence (of page 9, second paragraph) references the fact that a substantial snowpack develops during the winter at higher elevations. For clarity, PG&E suggests that this sentence be modified to indicate that the referenced higher elevations occur outside of the Poe Project's footprint. PG&E suggests that the following be added at the end of this sentence: "outside of the Poe Project footprint." (page 3, paragraph 4).	Sentence revised accordingly.	IS/MND Section 3.1.5.1, page 9.
32)  John A. Whittaker, IV, Winston & Strawn, Attorney for PG&E (October 10, 2017)	The referenced paragraph (Water Year Type) is from Part 1 of Condition 24 of the USFS' May 28, 2007 Final § 4(e) Conditions for the new license for Poe. That paragraph specifies that the Water Year Type, which establishes the amount of minimum instream flows that must be provided, shall be determined based on the predicted, unimpaired inflow to Oroville and spring snowmelt runoff forecasts "each month from January through May," which means that the first change in water year type (and hence change in minimum	State Water Board can appreciate the desire for consistency among PG&E's North Fork Feather River Projects and potential water management challenges in operating projects under different flow regimes. However, Rock Creek-Cresta and Poe have operated under different instream flow requirements and water year types for the last 16 years. The State Water Board believes that using the most relevant and up to date information in managing water resources is best for protecting the beneficial uses of the NFFR. It is also noted that the Upper North Fork Feather River Hydroelectric Project and Bucks Creek Hydroelectric Project have the potential to include a February water year determination change.	None required.

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	<p>flow releases) can occur in January. However, this is inconsistent with the existing license for PG&amp;E's upstream Rock Creek-Cresta Project (FERC Project No. 1962), which specifies that the water year type determination (and hence change in minimum instream flow releases) for that project are to be based on forecasts "each month from March through May" (see 97 FERC paragraph 61,084 at p. 61,446 (2001)), meaning that the first change in water year type (and hence change in minimum flow releases) can occur in March. Because Rock Creek-Cresta and Poe are operated in series and the minimum flow releases from Rock Creek-Cresta affect the ability of PG&amp;E to provide minimum flow releases at Poe, the determinations of Water Year Types for each project must be based on the same monthly forecasts, with the first change in minimum flow releases occurring in the same month (March). For this reason, PG&amp;E will be discussing with the USFS the need for it to revise Part 1 of Condition 24 to change the reference to months therein from "each month from January through May" to "each month from March through May."</p>		

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	<p>PG&amp;E also notes that the comparable proposed condition in SWB's June 14, 2017 Draft WQC (Draft Condition 2) is also inconsistent with the Rock Creek-Cresta license, since it specifies that the Water Year Type determinations are to be based on February-May forecasts. While PG&amp;E inadvertently neglected to point this issue out in its July 14, 2017 comments on the Draft WQC, PG&amp;E requests that, as a result of these instant comments, the SWB revise Draft Condition 2 to change the referenced forecast months from "February, March, April, and May" to "March, April, and May." (page 3, paragraph 5 and page 4, paragraph 1).</p>		
<p>33)  John A. Whittaker, IV, Winston &amp; Strawn, Attorney for PG&amp;E (October 10, 2017)</p>	<p>This paragraph (page 29, last paragraph) discusses the requirement to develop and implement a riparian monitoring plan included in the FERC Staff Alternative, which requires surveys in years 1-4 and at sampling intervals thereafter to be determined during development of the plan. Draft Condition 11 of the SWB's June 14, 2017 Draft WQC also specified a riparian monitoring plan with surveys conducted in years 1-4, and at five year intervals thereafter.</p> <p>PG&amp;E believes that conducting surveys in years 1-4 is inappropriate. Because riparian processes are long</p>	<p>Revised monitoring interval accordingly.</p>	<p>IS/MND Section 4.5.2, page 30.</p>

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	<p>term and changes occur slowly, it will likely take at least until year 4 to adequately assess change, and annual variability may confound the analysis. PG&amp;E instead recommends an initial baseline-monitoring year following approval of the plan, followed by monitoring every 5 years thereafter. PG&amp;E made this suggestion in its July 14, 2017, comments on the Draft WQC (at p. 10, regarding proposed Condition 11) and will be making a similar comment to FERC. If the SWB decides to retain the requirement of surveys in years 1-4, it should nevertheless modify Condition 11 to specify that surveys in years following the first four years be "in accordance with the FERC Staff Alternative." This change would avoid inconsistent requirements between the FERC Staff Alternative and Condition 11 with respect to the timing of out-year surveys (page 4, paragraphs 2 and 3).</p>		
<p>34)  John A. Whittaker, IV, Winston &amp; Strawn, Attorney for PG&amp;E (October 10, 2017)</p>	<p>Mitigation Measure Geology and Soils 1 (GS-1) would require PG&amp;E to submit detailed plans outlining all construction activities to the SWB for review and written approval.</p> <p>PG&amp;E has serious concerns with this measure. Requiring prior SWB review and written approval of detailed plans for all construction</p>	<p>The environmental analysis under CEQA identified potentially significant impacts that are mitigated to less-than-significant with the proposed feasible mitigation measure, which will remain unchanged.</p> <p>State Water Board staff appreciates the concerns PG&amp;E raises, and agrees that the type of measures contemplated by GS-1 will be requirements of the water quality certification. The MMRP for GS-1 identifies two conditions of the water quality certification that will</p>	<p>None required.</p>

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	<p>activities could hinder the ability of PG&amp;E to timely complete construction activities and therefore put it at risk of being in non-compliance with FERC-imposed construction deadlines. In addition, going through this process for each construction activity would substantially increase costs to PG&amp;E and eventually its customers. Further, it appears that this requirement is unnecessary given other conditions that will be included in the new license. First, Condition 4 of the USFS's May 28, 2007 Final 4(e) Conditions requires PG&amp;E to consult annually with the USFS on resource measures. It is PG&amp;E's experience that these meetings are attended by stakeholders, including representatives of the SWB, and that upcoming construction projects are identified and measures to address any anticipated environmental impacts from such projects are addressed and agreed upon by PG&amp;E, the USFS, and other stakeholders. Thus, the SWB will have an opportunity to get the type of measures contemplated by Mitigation Measure GS-1 adopted for each construction project as appropriate as a result of this process. Second, under proposed Condition 8 of the Draft WQC, PG&amp;E will be required to prepare and submit to the SWB for review and</p>	<p>satisfy the implementation of GS-1: Condition 8 – Recreation Improvement and Monitoring Plan, and Condition 12 – Road Management Plan (See MMRP).</p> <p>To the extent that the requirements of Conditions 8 and 12 include the measures discussed in GS-1, the water quality certification will not require duplicate submittals for Project activities that impact water quality.</p>	

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	<p>approval a Recreation Improvement and Monitoring Plan that must include construction details for all of the recreation improvements to be implemented during the first three years of license implementation. This will provide the SWB with the opportunity to impose the type of measures contemplated by Mitigation Measure GS-1 as to the construction of these recreation improvements, which constitute the bulk of the planned construction activities during the term of the new license. As a result of these two conditions, potential construction impacts would be reduced to less than significant. PG&amp;E therefore requests that Mitigation Measure GS-1 be eliminated (page 4, paragraphs 4 and 5 and page 5, paragraph 1).</p>		
<p>35)  John A. Whittaker, IV, Winston &amp; Strawn, Attorney for PG&amp;E (October 10, 2017)</p>	<p>The description of cultural resource measures indicates that PG&amp;E will be preparing a final HPMP [Historic Properties Management Plan] in consultation with appropriate federal, state, and local agencies. The SWB may wish to revise this description to reflect the fact that PG&amp;E will also be consulting with interested Indian tribes in preparing the final HPMP. (page 5, paragraph 2).</p>	<p>Edited to include interested Native American Tribes.</p>	<p>IS/MND Section 6.0, page 95.</p>
<p>36)  John A. Whittaker, IV, Winston &amp; Strawn,</p>	<p>PG&amp;E would like to thank the SWB for the opportunity to submit these comments on the MND and welcomes the opportunity to discuss</p>	<p>Comment noted.</p>	<p>None required.</p>

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Attorney for PG&E (October 10, 2017)	them with the SWB. If you have any questions regarding these comments and/or would like to schedule a meeting to discuss them, please contact Annette Faraglia at arf3@pge.com or (415) 973-7145 or John Klobas at john.klobas(a)pge.com or (530) 335-5653 (page 5, paragraph 3).		
37) Amy Lind, USFS (October 10, 2017)	One general comment, for your information – During future Forest Service planning efforts (i.e., revisions to National Forest Land and Resource Management Plans) the Forest Service is adopting a new designation for Forest Service special-status or at-risk species. This new designation, “species of conservation concern”, may replace the existing “sensitive species” designation, when Forests undergo Forest Plan revision. We may need to globally revise any 4(e) conditions to reflect this change, at some point in the future (page 1, paragraph 2).	Comment noted.	None required.
38) Amy Lind, USFS (October 10, 2017)	Reference to “Interior” - consider including the list of Federal agencies represented, for clarity (page 1 comment table).	Clarified text accordingly.	IS/MND Section 2.1, page 3.
39) Amy Lind, USFS (October 10, 2017)	Reference to State Water Board (SWB) Water Quality Certification (WQC) – should this be draft WQC and also list the date the draft was issued? (page 1, comment table).	Comment noted. The reference will be to the final water quality certification.	IS/MND Section 2.2, page 3.
40) Amy Lind, USFS (October	Provide a citation for the statement that “Stream conditions under Existing Project operations have	Added citation.	IS/MND Section 3.1.2.1, page 5.

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10, 2017)	improved conditions for such species as hardhead and Sacramento sucker, and reduced optimal conditions for rainbow trout.” (page 1, comment table).		
41) Amy Lind, USFS (October 10, 2017)	Similar to other resource areas in Section 3.1, should the Geology and Soils section also reference FERC’s final Environmental Assessment (EA)? (page 1, comment table).	The FERC final EA did not provide a detailed description of the Existing Project’s Geology and Soils. As such, other references were cited.	None required.
42) Amy Lind, USFS (October 10, 2017)	Please define the term “vicinity” as in “vicinity of the Existing Project”, in relation to rivers of the National Wild and Scenic Rivers System or use a more specific term. The Middle Fork Feather River is an existing Wild and Scenic River (page 1, comment table).	Revised text accordingly.	IS/MND Section 3.1.6, page 11.
43) Amy Lind, USFS (October 10, 2017)	Provide citations for the statements about recreation use, access, and facilities associated with the Project (page 1, comment table).	Added citations.	IS/MND Section 3.1.7, pages 11 and 12.
44) Amy Lind, USFS (October 10, 2017)	On the map legend, clarify that the “Proposed FERC boundary” is in addition to the existing FERC boundary; e.g., revise the label to read “Proposed addition to FERC boundary”, or similar (page 1, comment table).	Added existing and proposed boundaries to Figure 3, as depicted in Figure 2, and added note to both figure captions.	IS/MND Section 3.2.1, pages 13 and 15.
45) Amy Lind, USFS (October 10, 2017)	Consider adding a note that Forest Service preliminary 4(e) conditions 25 and 26 were included in final 4(e) condition 24. Otherwise, it appears that conditions may be missing from your summary (page 1, comment table).	Added note.	IS/MND Section 4.4.2.1, page 20.

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46) Amy Lind, USFS (October 10, 2017)	Recommend clarifying that the “probability of extinction” information provided in Lind and Yarnell (2011) was actually derived from Kupferberg et al. 2009. For example, the sentence could be rewritten... “They found, based on Kupferberg et al. 2009, that if 40% or more of egg masses....” Then add Kupferberg et al. 2009 to your Reference section (page 2, comment table).	Revised footnote and added citation.	IS/MND Section 5.4.5, page 45 and Section 7.0, page 97.
47) Amy Lind, USFS (October 10, 2017)	California Red-legged frog – suggest referencing distance to nearest designated Critical Habitat, in French Creek (page 2, comment table).	Added text accordingly.	IS/MND Section 5.4.5, page 47.
48) Amy Lind, USFS (October 10, 2017)	Reference to SWB WQC rationale 3.9 and Condition No. 9 - recommend SWB consider broadening monitoring to include aquatic invasive species, such as <i>Myxobolus cerebralis</i> , which is a myxozoan parasite of salmonids and is known to occur within the North Fork Feather River watershed (see attached report, Richey et al. 2016) (page 2, comment table).	The Board’s CEQA analysis did not identify this as a potential impact and as such no associated mitigation monitoring is required. Richey et al. 2016 did not document signs of myxozoan parasites within the Project area.	None required.
49) A. Leigh Bartoo, USFWS (October 10, 2017)	In general, the USFWS supports the Proposed Measures. Regarding effects of the Project on the foothill yellow-legged frog, we support and endorse the comments submitted by the Forest Service on July 17, 2017 and the California Department of Fish and Wildlife on July 26, 2017. These comments and recommendations were largely incorporated into the IS/MND by	Comment noted.	None required.

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	<p>SWRCB staff. The USFWS expects that the minimum instream flows, pulse flow schedule, ramping rate plan, and associated monitoring plans (pages 26-29 of the IS/MND) are likely to improve habitat conditions for foothill yellow-legged frogs and native fish species within the Poe reach of the North Fork Feather River (page 1, paragraph 1).</p>		
<p>50) A. Leigh Bartoo, USFWS (October 10, 2017)</p>	<p>The only addition requested is including United States Fish and Wildlife Service (USFWS) in communications regarding federally-listed species. For any federally-listed species, or federal candidate species present where work is anticipated to occur or where species may be affected by flows, we request consultation with USFWS pursuant to the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 et seq.). A list of potentially affected species can be obtained at <a href="https://www.fws.gov/sacramento/es-species/lists/es-species-lists-overview.htm">https://www.fws.gov/sacramento/es-species/lists/es-species-lists-overview.htm</a></p> <p>The need for ESA consultation should be included in the following sections of the MND: 4.4.2.3--Condition No. 35 and 36 5.4.5--All Special-Status Species</p> <p>(page 1, paragraphs 2 and 3).</p>	<p>In FERC's final EA, FERC concluded that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment. In addition, it is the State Water Board's understanding ESA consultation occurred in 2006. Conditions 2, 3, 4, 5, 6, 8, 9, 10, and 13 in the final water quality certification provide opportunities for input in Project management activities.</p>	<p>None required.</p>

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**References**

- FERC (Federal Energy Regulatory Commission). 2007. Final environmental assessment for the Poe Hydroelectric Project (FERC Project No. 2106-016), California. Federal Energy Regulatory Commission, Washington, DC. March 29, 2007.
- Kupferberg, S.J., A. Lind, and W. Palen. 2009. Pulsed flow effects on the foothill yellow-legged frog (*Rana boylei*): Population modeling. Final Report to the California Energy Commission, PIER., 80 pp (August).
- Lind, A. and S. Yarnell. 2011. Assessment of Risks to Sierra Nevada Populations of Foothill Yellow-Legged Frogs (*Rana boylei*) Under Varying Snow-Melt Hydrograph Recession Rates in Rivers. March 24, 2011 (update).
- PG&E. 2003. Final License Application for the Poe Project (FERC No. 2107) application for new license. December 2003. Water and Power Law Group PC. 2013. Butte County and American Whitewater's Proposed Non-Flow Recreation Measures for the Poe Project (P-2107). Letter from Nicholas Niuro, Water and Power Law Group PC to Peter Barnes and David Rose, State Water Resources Control Board. October 18, 2013.